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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re M.S., a Person Coming Under the
Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

A130290

**(Contra Costa County
Super. Ct. No. J0701442)**

Several teenagers, including appellant M.S., entered the home of a vacationing neighbor and committed various acts of vandalism and theft over a one-month period. Appellant was continued as a ward of the juvenile court after he admitted a petition alleging a single count of residential burglary. (Welf. & Inst. Code, § 602; Pen. Code, §§ 459, 460, subd. (a).) He now challenges the order directing him to pay restitution to the victim as a condition of probation, arguing that he was deprived of due process during the restitution hearing. We affirm.

BACKGROUND

Yolanda Norwood, the victim in this case, returned from a month-long vacation to find that her home had been ransacked, vandalized and burglarized. The intruders had broken a window to gain access, sprayed an unknown liquid on the walls and ceiling,

consumed food and alcohol, strewn her belongings throughout the home, and stolen or damaged several valuable items.

Neighbors informed Norwood that neighborhood teenagers were responsible. Norwood confronted C.W. and her friend M.B., teenage girls who admitted that they had entered the home with appellant and had taken some purses and clothing. They said the home had already been vandalized. Police officers later responded to a disturbance call at appellant's house and found Norwood arguing with appellant and his friend F.M. Appellant told the officer, "I regret everything I did."

Appellant told the officer that three weeks earlier, he and F.M. and another youth, C.B., had walked by Norwood's house and noticed a piece of paper posted on the door.¹ They returned that night, broke a window with a rock, and entered the house. Appellant and C.B. stole a flat screen television, a PlayStation 2, and stereo equipment, which they stored in a vacant house down the street. Property belonging to Norwood, including a pocket bike, a stereo system and a coin collection, were found in appellant's home.

The district attorney filed a supplemental delinquency petition² alleging that appellant had committed a residential burglary. Appellant admitted the allegation and was placed on probation, subject to a one-year commitment to a juvenile rehabilitation facility and various other terms and conditions such as the requirement that he pay direct victim restitution.

On September 26, 2008, the probation department sent appellant a "Notice of Determination of Amount of Restitution," indicating that the court would set the amount: "The victim reports a broken window in the family room, her possessions in multiple rooms ransacked, a hole in the wall, various liquid substance[s] sprayed throughout her home and multiple stolen items (television sets, stereo system, CD players, a pocket bike, 300 music CD's and DVD's, clothing and food). The victim reports damage to some of the recovered items. She reports the mustard, ketchup, salad dressing, honey, syrup,

¹ Foreclosure proceedings on the home had been initiated.

² Appellant was on probation in an unrelated vandalism case.

marinades, and other items sprayed throughout her home ruined many of her possessions and electronic equipment. . . . [¶] Documentation is available in the probation file.”

On February 23, 2009, the probation officer advised the court that Norwood was seeking \$56,805.37, as set forth in a five-page itemized list she had prepared detailing her losses. Some of the more valuable items that had been stolen or damaged were a Kenwood refrigerator (\$1,600), a red suede couch (\$2,000), a Kenwood stereo (\$2,000), diamond earrings (\$1,000), a necklace set (\$1,000), a Gucci watch (\$1,450), pieces of gold (\$1,500), a custom-made chain and pendent (\$12,500), and a diamond and sapphire ring (\$7,500).

On November 23, 2009, the court commenced a hearing to determine the restitution owed by appellant, C.W. and F.M., who had also been declared wards of the court. Norwood presented an itemized list of property that had been stolen or damaged and additionally elected to appear at the hearing and testify. Norwood explained that she had valued the stolen or damaged articles based on either her purchase price or the cost of replacement, and that she had used the full replacement price for certain sets of items (knives, dining room chairs) where only some of the components were damaged or missing.

The restitution hearing continued on November 25, 2009, at which time defense counsel cross-examined Norwood extensively about her valuation of certain items and her claim that some of those items were damaged or still missing. In an attempt to discredit Norwood’s claim by showing that she lacked the financial wherewithal to have purchased some of the more expensive items, counsel asked Norwood about her employment and income. The court sustained the prosecutor’s relevancy objection: “Her income is not relevant to this. She may have inherited money. She may have earned it all. May have been given to her as a gift from the boyfriend or family member.”

The hearing resumed on January 8, 2010, at which time Norwood submitted an itemized one-page list showing an additional \$5,796.30 in stolen or damaged property. Norwood had submitted these items to the probation department as part of her original claim, but, in the process of duplication, the page had been omitted from the materials the

Probation Department submitted to the court. Defense counsel objected to these items as untimely. The court allowed the supplemental list to be introduced, reserving a ruling on counsel's timeliness objection, and on February 22, 2010, the court continued to hear testimony by witnesses, including Norwood.

Defense counsel continued to cross-examine Norwood in an attempt to show that her restitution claim was inflated. Along these lines, counsel asked Norwood whether her house had been foreclosed upon and whether she was facing an unlawful detainer/eviction action when she purchased some of the items for which restitution was sought. The court sustained the prosecutor's relevancy objection. Counsel argued that this evidence was relevant to Norwood's credibility because (1) if Norwood had a negative cash flow necessitating a foreclosure, she could not have purchased luxury items during that period as she claimed; and (2) Norwood would have been very unlikely to leave highly valued property in a house that was in foreclosure. The court disallowed questions on the subject of eviction and foreclosure: "Whatever these things might show, I don't think they are bearing on honesty or veracity. People can be very honest and have foreclosure [or] an unlawful detainer suit brought against them."

The restitution hearing concluded on March 25, 2010, at which time the parties revisited the topic of questioning Norwood about her employment and sources of income. Defense counsel argued that the court had the power to order Norwood to testify about these areas, noting a potential due process violation in the event she was not required to answer the questions. The court disagreed, reasoning that it could not compel a victim to appear and testify during a restitution hearing and, as a corollary, could not compel a victim who did appear to answer certain questions.

Defense counsel asked Norwood where she was employed during 2004, and Norwood stated she would rather not answer because "I don't feel it's important that where I worked [] had anything to do with my house being broken into." She stated that she would rather not answer questions about her salary or income. However, she had brought with her a bank statement from that period to rebut the suggestion that she did not have the money to pay for the items she was claiming. The statement showed

Norwood had deposited over \$102,000 into one of her accounts in 2004 and withdrawn about \$36,000, leaving a balance of over \$65,000.³

Persisting in their efforts to show that Norwood did not have the money to purchase the items for which restitution was sought, defense counsel elicited testimony that her house was in foreclosure and she had initiated forbearance. Asked by defense counsel whether she had the money to make her mortgage payment at that time, Norwood declined to answer. She then explained that she did not follow through with the forbearance because it would have cost her more than she wanted to pay and by that time, the house had been “destroyed” (apparently referring to the damage cause by appellant and others).

After taking the case under submission, the court issued a written order and decision on October 1, 2010. It ruled that Norwood was entitled to restitution from appellant and C.W. in an amount of \$62,514.66, and from F.M. in an amount of \$56,805.87, the liability for those amounts being joint and several. The amount owed by F.M. was less because F.M. had stipulated to a total amount before Norwood amended her claim during the hearing to include additional items.⁴

In its written ruling, the court explained in some detail its decision to award restitution for items of property whose value or damage had been contested by the defense. It also addressed Norwood’s credibility as a witness: “Having listened to and observed Ms. Norwood testify, the court finds her to have been credible. Ms. Norwood testified in a subdued, calm, deliberate and articulate manner, and in great detail, almost always without hesitation in responding to questions. In short, her testimony had the

³ The bank statement itself was not introduced into evidence due to Norwood’s privacy concerns.

⁴ C.W. separately appealed the restitution order, arguing that the court abused its discretion in making her jointly and severally liable for the full amount of the damage when the evidence showed that she had entered the house after it was vandalized and had only taken two purses that were returned to Norwood. We reversed and remanded for a new determination of the restitution owed by C.W. (*In re C.W.* (A130251) filed Aug. 31, 2011, nonpub. opn.) Our resolution of that case does not affect the issues raised by appellant in the current appeal.

‘ring of truth.’ Her home had been ransacked, and she appeared to the court to have been emotionally devastated by the occurrence. Much has been made by minors’ counsel of Ms. Norwood’s reluctance and refusal to answer questions regarding her employment or sources of income. The inference the court was apparently being asked to draw is that Ms. Norwood did not have the wherewithal to purchase the items she was claiming to have been damaged or stolen, and therefore her claim is fabricated. To the contrary, the court’s impression was that for some unknown reason Ms. Norwood was embarrassed to reveal her employment or sources of income. The court ultimately did not compel her testimony on this subject matter because it believed it could not in light of the fact that a victim cannot be compelled to appear and testify at a restitution hearing in the first place. *People v. Cain* (2000) 82 Cal.App.4th 81 [(*Cain*)]. Ms. Norwood had appeared voluntarily. She could have simply submitted her claim in writing . . . and never appeared to testify as to anything, let alone her employment or sources of income. At a restitution hearing, a ‘defendant’s due process rights are protected if he is given notice of the amount of restitution sought and an opportunity to contest that amount; the rigorous procedural safeguards required during the guilt phase . . . are not required.’ *People v. Rivera* (1989) 212 Cal.App.3d 1153, 1161. It should [be] noted that the court’s finding that Ms. Norwood is and was credible does not derive in any part from the court’s view that it had to ignore her refusal to answer certain questions; the court simply believed it could not compel her testimony; the court has considered her refusal to answer those questions and has nevertheless found her to have been credible.”

DISCUSSION

Appellant argues that he was deprived of due process of law because (1) the juvenile court improperly restricted his right to cross-examine Norwood about the sources of income that would have enabled her to purchase the property for which restitution was claimed; (2) the court delegated to Norwood the right to control the proceedings; and (3) the court allowed Norwood to supplement her claim in the middle of the hearing. We disagree.

Direct victim restitution in a juvenile case is governed by Welfare and Institutions Code section 730.6, which tracks the adult offender restitution provisions in Penal Code section 1202.4. (*In re M.W.* (2008) 169 Cal.App.4th 1, 4; *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.) Like an adult offender, a juvenile defendant has the right to a hearing to dispute the amount of restitution. (Welf. & Inst. Code, § 730.6, subd. (h).) A victim's right to restitution is broadly construed and the court has discretion when determining the formalities to be followed and the evidence to be considered. (*People v. Millard* (2009) 175 Cal.App.4th 7, 42.)

A criminal defendant does not have a Sixth Amendment right to confrontation during a hearing to determine the amount of restitution. (*Cain, supra*, 82 Cal.App.4th at pp. 86-87.) Though he does have a constitutional right to due process, that right is very limited. (*Id.* at p. 87; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391 (*Brittany L.*).) The court need not conduct "a lengthy, formal hearing to explore all aspects of the victims' claimed losses and appellant's defenses." (*Brittany L.*, at p. 1391.) " " "A defendant's due process rights are protected when the probation report gives notice of the amount of restitution claimed . . . , and the defendant has an opportunity to challenge the figures in the probation report at the sentencing hearing." ' [Citations]." (*Cain, supra*, 82 Cal.App.4th at p. 86.) " "The due-process clause should not be treated as a device for freezing the evidential procedure of sentencing in the mold of trial procedure.' " (*People v. Baumann* (1985) 176 Cal.App.3d 67, 81.)

Appellant argues that the court should have compelled Norwood to answer questions about her income and employment, so that the defense could show she lacked the financial means to have purchased the items for which restitution was claimed. Assuming the court had the discretion to make such an order, its failure to do so did not deprive appellant of due process. As the trial court correctly observed in its written ruling, Norwood was not required to testify at all. Even a victim's uncorroborated statement to a probation officer may support a restitution award. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542-1547.) Norwood's election to voluntarily appear

allowed appellant to question her extensively about particular items that were damaged or stolen. Appellant was given greater latitude than due process requires.

The court reasonably concluded that Norwood's income and employment were of marginal relevance in assessing her credibility, and did not outweigh her privacy interest in keeping information about her income and employment confidential.⁵ Appellant has not cited any authority holding that there is a constitutional due process right to cross-examine the victim during a restitution hearing in an attempt to discredit the victim's statement of economic loss. The defense was free to argue that Norwood's reluctance to answer questions on those topics suggested she had something to hide, but the court found Norwood to be credible, taking her refusal to answer into account.

We similarly reject appellant's corollary argument that the trial court abdicated its function as a neutral finder of fact when it refused to compel testimony about Norwood's employment and sources of income. The court made evidentiary rulings, as it was empowered to do. That it ruled against appellant does not indicate it was lacking impartiality, or that it allowed the victim to become the "de facto finder of fact." Even in the context of a criminal trial—at which, unlike a restitution hearing, the defendant possesses a constitutional right to confront the witnesses against him—an evidentiary ruling does not ordinarily violate due process. (See *People v. Benavides* (2005) 35 Cal.4th 69, 91.)

Appellant finally contends he was deprived of adequate notice when the court ordered him to pay over \$5,000 for items that were first disclosed to him during the restitution hearing. We disagree.

Norwood submitted a five-page list of items totaling \$56,805.37 on February 23, 2009. The restitution hearing commenced on November 23, 2009. On January 8, 2010, during the third session of that hearing, Norwood supplemented her claim with an

⁵ While the total amount of Norwood's claim was relatively high given the extent of the theft and damage to her home, the items on her list were the sort of property one would reasonably expect to find in the residence of an employed, adult homeowner: appliances, stereo equipment, furniture, video games, music, clothing, accessories, collectibles, and jewelry.

additional one-page list of items totaling \$5,796.30. Norwood had previously given this page to the probation department, but apparently, in the process of duplication, it had been omitted from the materials provided to the court. Appellant's counsel objected to the inclusion of those items in the restitution order. The restitution hearing continued on February 22 and March 25, 2010, during which time counsel was able to cross-examine Norwood about the items on the supplemental list. Counsel renewed the objection to the supplemental list during the March 25 hearing. The restitution that appellant was ordered to pay included items on the supplemental claim.

As the People note, there is no express statute of limitations on victim restitution, and the doctrines of estoppel and laches do not apply to such claims. (*People v. Harvest* (2000) 84 Cal.App.4th 641, 652.) Welfare and Institutions Code section 730.6, subdivision (h) contemplates that a restitution order may be modified. Here, appellant claims that he was deprived of adequate notice because the supplemental list presented by Norwood was first introduced "in the middle of the [restitution hearing]," but that hearing continued over a number of days and his trial counsel was able to cross-examine Norwood about the contents of the list. Appellant had sufficient notice of the supplemental claim to effectively challenge it during the hearing; if he believed he needed to present additional information, he should have requested a continuance for that specific purpose. (See *In re S.S.* (1995) 37 Cal.App.4th 543, 548; *People v. Prosser* (2007) 157 Cal.App.4th 682, 692.)

DISPOSITION

The judgment (restitution order) is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.